

1 Robert J. Giuffra, Jr. (admitted *pro hac vice*)  
2 William B. Monahan (admitted *pro hac vice*)  
3 Thomas C. White (admitted *pro hac vice*)  
4 SULLIVAN & CROMWELL LLP  
5 125 Broad Street  
6 New York, New York 10004-2498  
7 Telephone: (212) 558-4000  
8 Facsimile: (212) 558-3588

9 *Attorneys for Defendants Fiat Chrysler*  
10 *Automobiles N.V., FCA US LLC, VM*  
11 *Motori S.p.A., and VM North America, Inc.*  
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13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
15 **SAN FRANCISCO DIVISION**  
16

17 IN RE: CHRYSLER-DODGE-JEEP  
18 ECODIESEL MARKETING, SALES  
19 PRACTICES, AND PRODUCTS  
20 LIABILITY LITIGATION

Case No. 3:17-md-02777-EMC

The Honorable Edward M. Chen

21 This Document Relates to:

22 ALL CONSUMER AND RESELLER  
23 ACTIONS  
24

**DEFENDANTS FIAT CHRYSLER  
AUTOMOBILES N.V., FCA US LLC, VM  
MOTORI S.p.A., AND VM NORTH  
AMERICA, INC.'S UNOPPOSED  
ADMINISTRATIVE MOTION TO  
APPROVE A QUALIFIED SETTLEMENT  
FUND**

1 Defendants Fiat Chrysler Automobiles N.V., FCA US LLC (“FCA US”), VM  
2 Motori S.p.A., and VM North America Inc. (collectively, the “FCA Defendants”) hereby move  
3 this Court for entry of an Order approving the establishment of a Qualified Settlement Fund (the  
4 “QSF”), created through the forthcoming escrow agreement among the FCA Defendants, Bosch  
5 Defendants, and Plaintiffs’ Steering Committee (the “Escrow Agreement”), within the meaning  
6 of section 468B of the Internal Revenue Code of 1986, as amended (the “Internal Revenue  
7 Code”), and Treasury Regulations sections 1.468B-1, *et seq.* (the “Treasury Regulations”).

8 In support of this Motion, the FCA Defendants respectfully state as follows:

9 1. In accordance with the Amended Consumer and Reseller Dealership Class  
10 Action Settlement Agreement and Release, dated January 18, 2019 (the “Settlement  
11 Agreement”), the FCA Defendants have agreed to a claims-based settlement wherein Defendants  
12 will pay Class Members on a per-claim basis through an escrow account maintained by Citibank,  
13 N.A.

14 2. The FCA Defendants submit this Motion seeking an order establishing the  
15 escrow account as a “qualified settlement fund” within the meaning of section 468B of the  
16 Internal Revenue Code.

17 3. Plaintiffs’ Lead Counsel (Elizabeth Cabraser) and the Plaintiffs’ Steering  
18 Committee (“PSC”) do not oppose this motion.

19 **A. The Qualified Settlement Fund**

20 4. The purpose of establishing the QSF is to accept, hold, and disburse the  
21 settlement funds owed by the FCA Defendants to participating Class Members and for  
22 administration of the settlement pursuant to, and in accordance with, the terms of the Settlement  
23 Agreement and the Escrow Agreement. Use of a qualified settlement fund allows the FCA  
24 Defendants to treat payments into the escrow account as deductible at the time those payments  
25 are made into the escrow account, rather than at the time Class Members are paid from the fund.  
26 To the FCA Defendants’ knowledge, use of a qualified settlement fund will not have any impact  
27 to Class Members on the tax treatment of the payments they receive from the escrow account.  
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1           5.       Section 1.468B-1(c)(1) of the Treasury Regulations requires that a  
2 qualified settlement fund be (i) “established pursuant to an order of a governmental authority,  
3 including a court of law”; (ii) “subject to the continuing jurisdiction of that governmental  
4 authority”; (iii) “established to resolve or satisfy one or more contested or uncontested claims”;  
5 and (iv) “otherwise segregated from other assets of the transferor.”

6           6.       Upon approval by this Court, the QSF will qualify as a “qualified  
7 settlement fund” under section 468B of the Internal Revenue Code and sections 1.468B-1, *et seq.*  
8 of the Treasury Regulations, because: (i) the QSF is being established pursuant to an order of  
9 this Court; (ii) the QSF will be subject to the continuing jurisdiction and supervision of the  
10 Court, which is consistent with the terms and conditions of the Settlement Agreement; (iii) the  
11 QSF is being established to resolve or satisfy Class Members’ contested claims relating to  
12 alleged misrepresentations about the environmental characteristics of certain Ram 1500 and Jeep  
13 Grand Cherokee vehicles with 3.0 liter V6 diesel engines in the United States; and (iv) the QSF  
14 will be segregated from the general assets of any of the FCA Defendants.

15           **B.       Funding the Qualified Settlement Fund**

16           7.       All payments made into the QSF will be made in accordance with Section  
17 10 of the Settlement Agreement. Specifically, within ten business days after the Court enters the  
18 Final Approval Order, FCA US shall transfer or cause to be transferred \$45 million into the QSF,  
19 which funds shall be used, as necessary, to compensate Class Members who submit valid claims  
20 pursuant to the Settlement Agreement. Such payments and the earnings thereon (collectively,  
21 the “Escrow Amounts”) will be held by the QSF until disbursed by the Escrow Agent in  
22 accordance with the terms of the Settlement Agreement and Escrow Agreement. (*See Settlement*  
23 *Agreement § 10.1.*)

24           8.       The FCA Defendants, Bosch Defendants, and PSC have agreed, and the  
25 Settlement Agreement states (*see Settlement Agreement § 2.39*), that Citi Private Bank shall  
26 serve as the escrow agent (the “Escrow Agent”).  
27  
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1           9.     If and when the funding level of the QSF falls below 15% of the  
2 outstanding remaining liability to Class Members under the Settlement Agreement, the Escrow  
3 Agent shall notify FCA US in writing and, within seven business days, FCA US shall deposit  
4 such funds in the QSF as are necessary to bring the balance of the QSF back to no less than 15%  
5 of its respective outstanding remaining liabilities to Class Members; provided, however, that the  
6 minimum balance will in no event exceed the remaining maximum compensation due to all Class  
7 Members. (*See Settlement Agreement § 10.1.*)

8           10.    The estimated maximum outstanding liability for the FCA Defendants  
9 under the Settlement Agreement is \$279,960,800, and the outstanding remaining liabilities shall  
10 be calculated consistent with the Escrow Agreement.

11           **C.     Payment of Claims**

12           11.    Pursuant to the Settlement Agreement, upon receiving either (1) notice of  
13 approved claims from the FCA Defendants; or (2) notice of approved claims from the Claims  
14 Review Committee in the event of an appeal by a Claimant (as those terms are defined in the  
15 Settlement Agreement), the Claims Administrator shall present to the Escrow Agent a signed  
16 instruction (a “Claims Payment Instruction”). The Claims Payment Instruction shall include the  
17 dollar amount of funds required to be paid to fulfill the approved claims described above, and  
18 shall also list the FCA Defendants’ respective share of the distribution.

19           12.    The QSF will receive the funding amounts from FCA US and hold that  
20 sum, and the earnings thereon, until the QSF Administrator has completed all administration of  
21 such funds and income thereon, disbursements to Class Members, and payment of taxes and  
22 administrative costs in accordance with its terms, and subject to further approvals of this Court,  
23 if required.

24           13.    Thereafter, the FCA Defendants, the Bosch Defendants, and the PSC shall  
25 jointly instruct the Escrow Agent in writing, two years plus thirty calendar days after the  
26 Effective Date (as defined in the Settlement Agreement), and upon the Escrow Agent’s receipt of  
27 such written instruction from the Litigation Parties, which shall contain all relevant payment  
28

1 instructions, the Escrow Agent shall disburse all remaining funds held in the QSF to the FCA  
2 Defendants.

3 WHEREFORE, the FCA Defendants respectfully request that the Court enter the  
4 order proposed herewith, which will: (i) approve the establishment of the QSF; (ii) ensure that  
5 the Court retains continuing jurisdiction and supervision over the QSF; and (iii) determine that  
6 the QSF is a “qualified settlement fund” within the meaning of section 468B of the Internal  
7 Revenue Code and the Treasury Regulations thereunder.

8  
9 Dated: May 3, 2019

Respectfully submitted,

10 /s/ William B. Monahan

11 Robert J. Giuffra, Jr. (admitted *pro hac vice*)

12 William B. Monahan (admitted *pro hac vice*)

13 Thomas C. White (admitted *pro hac vice*)

14 SULLIVAN & CROMWELL LLP

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16 New York, New York 10004-2498

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY this 3rd day of May, 2019, a true and correct copy of the foregoing was electronically filed and served electronically via the Court's CM/ECF system, which will automatically serve notice to all registered counsel of record.

/s/ Megan Bradley  
Megan Bradley

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**UNITED STATES DISTRICT COURT  
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SAN FRANCISCO DIVISION**

IN RE: CHRYSLER-DODGE-JEEP  
ECODIESEL MARKETING, SALES  
PRACTICES, AND PRODUCTS  
LIABILITY LITIGATION

Case No. 3:17-md-02777-EMC

This Document Relates to:

ALL CONSUMER AND RESELLER  
ACTIONS

**[PROPOSED] ORDER APPROVING THE  
ESTABLISHMENT OF A QUALIFIED SETTLEMENT FUND**

Upon the Unopposed Motion of Defendants Fiat Chrysler Automobiles N.V.,  
FCA US LLC, VM Motori S.p.A., and VM North America Inc., and for good cause shown, the  
Court hereby orders as follows:

1. FCA's escrow account is established as a Qualified Settlement Fund (the "QSF");
2. the Court retains continuing jurisdiction and supervision thereof, in accordance with the terms of the forthcoming escrow agreement among the FCA Defendants, Bosch Defendants, and Plaintiffs' Steering Committee; and
3. FCA's escrow account is a "qualified settlement fund" within the meaning of section 468B of the Internal Revenue Code and the Treasury Regulations thereunder, and shall be operated in a manner consistent with the rules of Treasury Regulation Section 1.468B-1, *et seq.*

IT IS SO ORDERED.

DATED: \_\_\_\_\_, 2019

\_\_\_\_\_  
Edward M. Chen  
United States District Judge